

JS-6

**THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

1 Plaintiff Lisa Friedman (“Plaintiff”) and defendants EM Digital, LLC,
2 Empowered Media, LLC, and Jillian Michaels (collectively, “Defendants”)
3 entered into a Class Action Settlement, which is subject to review under Fed. R.
4 Civ. P. 23.

5 On October 23, 2019, the Court certified this matter as a class action and
6 named Plaintiff as the Class Representative and appointed John P. Kristensen and
7 Jesenia A. Martinez of Kristensen LLP as Class Counsel [Dkt. 69].

8 On September 5, 2019, Defendants filed their Motion for Summary
9 Judgment [Dkt. 39], which Plaintiff opposed on September 26, 2019 [Dkt. 57].
10 On October 24, 2019, after oral argument was heard, the Court ordered further
11 briefing by the Parties on a number of issues raised in Defendants’ Motion for
12 Summary Judgment [Dkt. 75]. The Parties fully briefed the issues on November
13 4, 2019, and November 12, 2019 [Dkt. 76-79]. On December 2, 2019, Plaintiff
14 filed a Notice of Settlement after an agreement was reached between the Parties
15 [Dkt. 80]. At the time the Notice of Settlement was filed, the Court had not issued
16 a ruling on Defendants’ Motion for Summary Judgment. *See* Dkt. 87-1 at ¶ 18.

17 On February 7, 2020, Plaintiff filed the Class Action Settlement
18 Agreement [Dkt. 87-2] along with her Motion for Preliminary Approval of Class
19 Action Settlement [Dkt. 87].

20 On March 9, 2020, the Court held a hearing on Plaintiff’s Motion for
21 Preliminary Approval of Class Action Settlement [Dkt. 87] and requested
22 supplemental briefing and that edits be made to the proposed documents to be sent
23 to the Class.

24 On March 23, 2020, Plaintiff filed her Supplemental Brief and revised
25 Class Action Agreement [Dkt. 89-1] and proposed documents to be sent to the
26 Class.

27 On April 16, 2020, the Court entered an Order of Granting Preliminary
28 Approval of Class Settlement [Dkt. 92]. Pursuant to the Preliminary Approval

1 Order, the Court, among other things: (i) preliminarily approved the proposed
2 Settlement; (ii) appointed Kurtzman Carson Consultants, LLC (“KCC”) as
3 Settlement Administrator; and (iii) set the date and time of the Final Approval
4 Hearing for August 6, 2020 at 8:30 a.m.

5 Written notice of the proposed Settlement was served pursuant to the Class
6 Action Fairness Act of 2005, 28 U.S.C. § 1715.

7 On July 9, 2020, Plaintiff filed her Motion for Final Approval of Class
8 Action Settlement [Dkt. 93] requesting final approval of the proposed Settlement.

9 That same day, Plaintiff filed her Motion for Attorneys’ Fees, Costs, and
10 Incentive Award [Dkt. 94].

11 On August 6, 2020, a Final Approval Hearing was held to determine
12 whether the proposed Settlement is fundamentally fair, reasonable, adequate, and
13 in the best interests of the Class and should be approved by the Court.

14 Having considered all matters submitted to it at the hearing on the Motion
15 for Final Approval [Dkt. 93] and Motion for Attorneys’ Fees, Costs, and Incentive
16 Award [Dkt. 94] and otherwise, including the complete record of this action, and
17 good cause appearing therefor, the Court hereby finds and concludes as follows:

18 1. The capitalized terms used in this Order shall have the same meaning
19 as defined in the Agreement except as otherwise expressly provided.

20 2. The Court has jurisdiction over this Litigation, the claims raised in
21 the Litigation, and the Parties.

22 3. The Parties complied in all material respects with the Notice plan set
23 forth in the Agreement. The Court finds that the Notice plan, which was
24 effectuated pursuant to the Preliminary Approval Order, constituted the best
25 notice practicable under the circumstances and constituted due and sufficient
26 notice to the Class of the nature and pendency of the Litigation; the existence and
27 terms of the Agreement; and the Settlement Class Members’ rights to make
28 claims, opt out, or object. Further, the Notice plan satisfies the Federal Rules of

1 Civil Procedure, the United States Constitution, and any other applicable law.
2 Notice of the Settlement was also provided to the appropriate state and federal
3 government officials in compliance with the Class Action Fairness Act of 2005,
4 28 U.S.C. § 1715.

5 4. The Court has determined that full opportunity has been given to the
6 Class Members to opt out of the Settlement, object to the terms of the Settlement
7 or to Class Counsel's request for attorneys' fees, costs, and expenses and
8 incentive award to Plaintiff, and otherwise participate in the hearing on Final
9 Approval held on August 6, 2020.

10 5. The Court finds that the Settlement is in all respects fair, reasonable
11 and adequate. The Court therefore finally approves the Settlement for the reasons
12 set forth in the Motion for Final Approval including, but not limited to, the fact
13 that the Agreement was the product of informed, arm's-length negotiations
14 between competent, able counsel; counsel for the Parties had an adequate
15 opportunity to evaluate and consider the strengths and weaknesses of their clients'
16 respective positions; the Litigation involved vigorously disputed claims,
17 underscoring the uncertainty of the outcome in this matter and the risks of
18 continued litigation; the Settlement provides meaningful relief and monetary
19 benefits for the Settlement Class Members; and the Parties were represented by
20 highly qualified counsel who vigorously and adequately represented their
21 respective clients' interests.

22 6. The Settlement is in the best interests of the Class taking into account
23 the extent of the relief obtained in relation to the risks faced by the Class
24 Members in continuing to litigate their claims. The relief provided under the
25 Agreement is appropriate as to the individual members of the Class and to the
26 Class as a whole. All statutory and constitutional requirements necessary to
27 effectuate the Settlement have been met and satisfied. The Parties shall effectuate
28 the Agreement in accordance with its terms and provisions.

1 7. By operation of this Final Approval Order and Judgment, by the
2 Named Plaintiff and all Class Members (and their assignees who have not
3 excluded themselves from the Class) of the Releasees of and from all Released
4 Claims and shall include the agreement and commitment by Named Plaintiff and
5 all Class Members to not now or hereafter initiate, maintain, or assert against the
6 Releasees or any of them any and all causes of action, claims, rights, demands,
7 actions, claims for damages, equitable, legal and/or administrative relief, interest,
8 demands or rights, including without limitation, claims for damages of any kind,
9 including those in excess of actual damages, whether based on federal, state, or
10 local law, statute, ordinance, regulation, contract, common law or any other
11 sources that have been, could have been, may be, or could be alleged or asserted
12 now or in the future by Named Plaintiff or any Class Member against the
13 Releasees, or any of them, in the Lawsuit or in any other court action or before
14 any administrative body (including any regulatory entity or organization),
15 tribunal, arbitration panel or other adjudicating body arising out of or related to
16 the Released Claims.

17 8. The “Released Claims” shall mean any and all claims, actions, causes
18 of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or
19 liabilities, including but not limited to tort claims, claims for breach of contract,
20 claims for violation of privacy, statutory claims, breach of the duty of good faith
21 and fair dealing, breach of statutory duties, actual or constructive fraud,
22 misrepresentations, fraudulent inducement, statutory and consumer fraud, breach
23 of fiduciary duty, unfair business or trade practices, any violation of Cal. Bus. &
24 Prof. Code §§ 17600 *et seq.*, any violation of Cal. Bus. & Prof. Code §§ 17200 *et
seq.* predicated on violations of California’s Automatic Renewal Law, Cal. Bus. &
25 Prof. Code §§ 17600, *et seq.*, any violation of Cal. Civ. Code §§ 1750 *et seq.*
26 predicated on violations of California’s Automatic Renewal Law, Cal. Bus. &
27 Prof. Code §§ 17600, *et seq.*, any violation of Cal. Bus. & Prof. Code §§ 17500 *et
seq.*

1 *seq.* predicated on violations of California's Automatic Renewal Law, Cal. Bus. &
 2 Prof. Code §§ 17600, *et seq.*, restitution, rescission, claims for contribution or
 3 indemnification, compensatory and punitive damages, injunctive or declaratory
 4 relief, attorneys' fees, interests, costs, penalties and any other claims, whether
 5 known or unknown, alleged or not alleged in the Lawsuit, suspected or
 6 unsuspected, contingent or matured, under federal, state or local law, which
 7 Named Plaintiff and/or any Class Member had, now have, or may in the future
 8 have with respect to any conduct, act, omissions, facts, matters, transactions or
 9 oral or written statements or occurrences prior to the Preliminary Approval Date
 10 arising out of or related to any claim that was or could have been asserted against
 11 any Defendant in the Lawsuit or that arose or could have arisen during the Class
 12 Period same or similar to the causes of action asserted in the First Amended
 13 Complaint in *Friedman v. Michaels, et al.* filed on May 16, 2019.

14 9. "Releasees" shall mean Defendants, and all of their present, former,
 15 and future officers, directors, employees, attorneys, insurers, insurance agents and
 16 brokers, owners, representatives, predecessors, independent contractors, suppliers,
 17 vendors, processors, successors, agents, attorneys, assigns, parents, subsidiaries,
 18 affiliates, related companies, shareholders, members, counsel and legal
 19 representatives.

20 10. Plaintiff and the Class Members shall, by operation of this Final
 21 Approval Order and Judgment, be deemed to have waived the provisions, rights
 22 and benefits of California Civil Code section 1542, and any similar law of any
 23 state or territory of the United States or principle of common law. Section 1542
 24 provides:

25 **A GENERAL RELEASE DOES NOT EXTEND TO**
 26 **CLAIMS THAT THE CREDITOR OR RELEASING**
 27 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN**
 28 **HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**

RELEASE AND THAT, IF KNOWN BY HIM OR HER,
WOULD HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

11. Nothing herein shall bar any action or claim to enforce the terms of the Agreement.

12. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with the Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by any Party of any fault, liability or wrongdoing of any kind whatsoever to any other Party. Neither the Agreement nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be or may be used in any proceeding in any court, administrative agency, or other tribunal as an admission of, or evidence of, the validity of any claim made by the Class Members or Plaintiff's Counsel, or of any wrongdoing or liability of the persons or entities released under the Agreement, or (b) is or may be deemed to be or may be used in any proceeding in any court, administrative agency, or other tribunal as an admission of, or evidence of, any fault or omission of any of the persons or entities released under the Agreement. Defendants' agreement not to oppose the entry of this Final Approval Order and Judgment shall not be construed as an admission or concession by Defendants that: (a) any of the allegations contained within the First Amended Complaint are meritorious; and (b) class certification was or would be appropriate in the Litigation or would be appropriate in any other action.

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1 13. Class Counsel's application for an award of attorneys' fees, costs,
2 and expenses and an incentive award to Plaintiff is granted. In accordance with
3 the terms of the Agreement, the following amounts shall be paid by Defendants
4 from the Settlement Fund:

5 a. Fees to Class Counsel: \$56,250.00;
6 b. Costs to Class Counsel: \$16,663.13;
7 c. Incentive Award to Plaintiff: \$2,000.00.

8 14. Class Counsel's attorneys' fees, costs, and incentive award to
9 Plaintiff shall be paid from the Settlement Fund no later than seven (7) business
10 days from the Effective Date.

11 15. The Court orders the Settlement Administrator to take all steps
12 necessary to create the Settlement Fund and distribute the monies in accordance
13 with the Agreement and this Order and Judgment. The Court authorizes payment
14 to the Settlement Administrator of its fees and costs, in an amount not to exceed
15 \$25,000.00.

16 16. Except as provided in this Order, Named Plaintiff and the Class
17 Members shall take nothing against Defendants by the First Amended Complaint,
18 and Final Judgment shall be entered thereon, as set forth in this Order.

19 17. This Order is intended to be a final judgment disposing of the above-
20 captioned action in its entirety.

21 18. Without affecting the finality of the Judgment hereby entered, the
22 Court reserves jurisdiction over the implementation of the Agreement.

23 19. Without further order of the Court, the Parties may agree to
24 reasonable extensions of time to carry out any provisions of the Agreement.

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1 20. There is no just reason for delay in the entry of this Judgment, and
2 immediate entry by the Clerk of the Court is expressly directed pursuant to Rule
3 54(b) of the Federal Rules of Civil Procedure.

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5 **IT IS SO ORDERED.**

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7 Dated: August 18, 2020

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Honorable George H. Wu
United States District Judge